

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0627P

Income Tax

Calendar Years 1995, 1996, & 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed on an income tax assessment resulting from a Department audit for the calendar years 1995, 1996, & 1997.

The taxpayer is a manufacturer and seller of diagnostic equipment and supplies for laboratory tasks.

The taxpayer has no business location in Indiana. Nexus is established through the existence of a substantial amount of taxpayer equipment at customer locations.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as this is a first-time audit and the taxpayer inadvertently put the wrong amount on the tax return. The Department points out the regulations are clear as to taxability for selling at retail.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's protest is denied.